

STATE OF MICHIGAN
COURT OF APPEALS

WENDELL VEY CRAWFORD,

Plaintiff-Appellant,

UNPUBLISHED
March 29, 2012

v

No. 301413
St. Clair Circuit Court
LC No. 09-000808-CZ

CITY OF ST. CLAIR,

Defendant,

and

ST. CLAIR COUNTY PROSECUTOR OFFICE,

Defendant-Appellee.

Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to the sole defendant in this case, St. Clair County Prosecutor's Office,¹ following its finding that defendant was entitled to immunity and that plaintiff's complaint failed to state a legally cognizable claim. For the reasons set forth in this opinion, we affirm.

Plaintiff pleaded guilty to a charge of unarmed robbery on October 1, 1953 and was sentenced to 1 to 15 years' imprisonment. He was released on February 24, 1958. On April 21, 2008, plaintiff moved for relief from the 1953 judgment, claiming that he was not represented by counsel at the time of his plea and sentencing. The trial court granted plaintiff's motion for relief from judgment on January 21, 2009. On March 23, 2009, plaintiff filed a civil complaint against the City of St. Clair and the St. Clair County Prosecutor's Office, seeking monetary damages for injuries plaintiff allegedly suffered as a result of the 1953 conviction. After defendant moved the trial court for summary disposition, plaintiff moved to amend his complaint. The trial court denied plaintiff's motion to amend the complaint finding that any amendment would be futile.

¹ The City of St. Clair was dismissed for lack of service on March 26, 2010. That order has not been appealed leaving St. Clair County Prosecutor's Office as to the sole defendant in this case.

The trial court granted defendant's motion for summary disposition on the grounds that defendant was entitled to immunity and that plaintiff failed to state a valid cause of action.

We first address plaintiff's argument that the trial court erred in granting summary disposition to defendant. Although the trial court's order does not indicate which subsection of MCR 2.116(C) it relied on in granting defendant's motion, a review of the order indicates that the trial court found that defendant was entitled to immunity and that plaintiff's complaint failed to state a cause of action. Because the trial court's order does not indicate that it considered anything other than the pleadings, we review the trial court's order as having been granted based on the application of immunity pursuant to MCR 2.116(C)(7), and based on failure to state a claim pursuant to MCR 2.116(C)(8). "Summary disposition is proper under MCR 2.116(C)(7) for a claim that is barred because of immunity granted by law." *Smith v Kowalski*, 223 Mich App 610, 616; 567 NW2d 463 (1997). A court reviewing a motion for summary disposition under MCR 2.116(C)(7) considers all of the documentary evidence submitted by the parties and accepts all of the plaintiff's well-pleaded allegations as true unless those allegations are specifically contradicted by the documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 433-435, 434 n 6; 526 NW2d 879 (1994). "To survive a motion for summary disposition, brought under MCR 2.116(C)(7), the plaintiff must allege facts warranting the application of an exception to governmental immunity." *Smith*, 223 Mich App at 616. "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A reviewing court considers only the pleadings, accepts the well-pleaded allegations of the complaint as true, and construes them in the light most favorable to the nonmovant. *Id.* at 119-120. Summary disposition pursuant to MCR 2.116(C)(8) is proper where the claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 396; 516 NW2d 498 (1994). Mere conclusory statements, unsupported by factual allegations, are insufficient to state a cause of action pursuant to MCR 2.116(C)(8). *Id.* at 395-396.

To the extent that plaintiff's complaint asserts a claim based on 42 USC 1983, plaintiff's complaint against defendant is not cognizable. "[A] § 1983 action for monetary damages for alleged federal constitutional violations may not be brought in state courts against the state or a state official sued in an official capacity." *Bay Mills Indian Community v Mich*, 244 Mich App 739, 749; 626 NW2d 169 (2001) (citation omitted). County prosecuting attorneys, when prosecuting individuals for violations of state law, are considered state officials for § 1983 purposes. See *Cady v Arenac Co*, 574 F3d 334, 342-343 (CA 6, 2009). In this case, when defendant charged and prosecuted plaintiff for robbery, defendant was acting as a state agent enforcing state law. Because defendant was acting as a state agent, plaintiff's suit is not cognizable under § 1983, and plaintiff's complaint failed to state a valid claim. Summary disposition of plaintiff's § 1983 claim was therefore proper pursuant to MCR 2.116(C)(8).

To the extent that plaintiff's complaint asserts state law tort claims against defendant, defendant is protected by governmental immunity pursuant to MCL 691.1407(1), which provides that "[e]xcept as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." In this case, plaintiff's complaint arises out of defendant's actions in prosecuting plaintiff for robbery. "There are few functions more clearly governmental in nature than the

arrest, detention, and prosecution of persons suspected of having committed a crime and the decisions involved in determining which suspects should be prosecuted and which should be released.” *Payton v Detroit*, 211 Mich App 375, 392; 536 NW2d 233 (1995). Because defendant was engaged in a governmental function, defendant is entitled to governmental immunity, and summary disposition of plaintiff’s state law claims was proper pursuant to MCR 2.116(C)(7).

The second issue raised by plaintiff is whether the trial court abused its discretion when it denied plaintiff’s motion to amend his complaint. “This Court will not reverse a trial court’s decision on a motion to amend a complaint absent an abuse of discretion that results in injustice.” *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). “[A]n abuse of discretion occurs only when the trial court’s decision is outside the range of reasonable and principled outcomes.” *In re Kostin*, 278 Mich App 47, 51; 748 NW2d 583 (2008). “When a trial court grants summary disposition pursuant to MCR 2.116(C)(8), or (C)(10), the opportunity for the nonprevailing party to amend its pleadings pursuant to MCR 2.118 should be freely granted, unless the amendment would not be justified.” *Ormsby v Capital Welding, Inc.*, 471 Mich 45, 52-53; 684 NW2d 320 (2004), citing MCR 2.116(I)(5). A proposed amendment is not justified if it would be futile. *Id.* (citation omitted). “An amendment would be futile if (1) ignoring the substantive merits of the claim, it is legally insufficient on its face; (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction.” *Id.* (internal citations omitted).

Plaintiff’s proposed amended complaint, like his original complaint, is based on defendant’s actions in prosecuting plaintiff for a violation of state law. However, a 42 USC 1983 claim is not cognizable against defendant for actions taken while enforcing state law, and defendant, in prosecuting plaintiff for a violation of state law, was engaged in a governmental function and is thereby protected by governmental immunity from state law tort claims pursuant to MCL 691.1407(1). Plaintiff’s proposed amended complaint is legally insufficient on its face, and amendment of plaintiff’s complaint would be futile. The trial court did not abuse its discretion in denying plaintiff’s motion to amend his complaint.

Affirmed. Defendant having prevailed is entitled to costs. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher